

1 Rule 7.3. Direct Contact with Prospective Clients.

2 (a) A lawyer shall not by in-person contact or other real-time communication solicit
3 professional employment from a prospective client ~~with whom the lawyer has no family~~
4 ~~relationship, prior or current professional relationship, or close personal friendship,~~
5 when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain.
6 ~~"Real-time communication" means in-person, telephonic, electronic, radio, wire,~~
7 ~~wireless or other similar communication directed to a specific recipient and~~
8 ~~characterized by the immediacy and interactivity of response between individuals, such~~
9 ~~as that provided through standard telephone connections and Internet "chat rooms."~~
10 unless the person contacted:

11 (a)(1) is a lawyer; or

12 (a)(2) has a family, close personal, or prior professional relationship with the lawyer.

13 (b) A lawyer ~~may~~ shall not solicit professional employment from a prospective client
14 by ~~any written, recorded or electronic communication directed to a specific recipient~~
15 ~~concerning a specific cause of action under the following circumstances or by in-person~~
16 ~~contact or other real-time communication even when not otherwise prohibited by~~
17 paragraph (a), if:

18 (b)(1) The person the prospective client has made known to the lawyer a desire not
19 to ~~receive communications from~~ be solicited by the lawyer; or

20 (b)(2) The communication the solicitation involves coercion, duress or harassment.

21 (c) Every written, recorded or electronic communication from a lawyer soliciting
22 professional employment from a prospective client ~~and with whom the lawyer has no~~
23 ~~family relationship, prior or current professional relationship, or close personal~~
24 ~~friendship, shall prominently known to be in need of legal services in a particular matter~~
25 shall include the words "Advertising Material" on the outside envelope, if any, and at the
26 beginning of any recorded or electronic communication, unless the recipient of the
27 communication is a person specified in paragraphs (a)(1) or (a)(2). For the purposes of
28 this subsection, "written communication" does not include advertisement through public
29 media, including but not limited to a telephone directory, legal directory, newspaper or
30 other periodical, outdoor advertising, radio or television.

(d) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in-person or other real-time communication to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

Comment

[1] There is a potential for abuse inherent in direct in-person or other real-time communication by a lawyer with a prospective client ~~known to need legal services~~. These forms of ~~solicitation by contact between~~ a lawyer ~~of and~~ a prospective client subject the ~~lay person~~ layperson to the private importuning of ~~a the~~ trained advocate in a direct interpersonal encounter. The prospective client, who may already feel overwhelmed by the circumstances giving rise to the need for legal services, may find it difficult fully to evaluate ~~fully~~ all available alternatives with reasoned judgment and appropriate self-interest in the face of the lawyer's presence and insistence upon being retained immediately. The situation is fraught with the possibility of undue influence, intimidation ~~and overreaching, particularly where the physical, emotional or mental state of the prospective client is such that the prospective client could not exercise reasonable judgment in employing a lawyer, and over-reaching~~.

[1a] "Real-time communication" means telephonic, electronic, radio, wire, wireless or other similar communication directed to a specific recipient and characterized by the immediacy and interactivity of response between individuals, such as that provided through standard telephone connections and Internet "chat rooms." This Comment is not included in the ABA Model Rule 7.3, and is added to clarify that the definition of real-time communication is broad enough to cover real-time communication of all types.

[2] The ~~This~~ potential for abuse inherent in direct in-person and other real-time solicitation of prospective clients justifies its prohibition, particularly since lawyer advertising ~~and written and recorded communication~~ permitted under Rule 7.2 ~~offers~~ offer alternative means of conveying necessary information to those who may be in need of legal services. Advertising and written and recorded communications that may be mailed or autodialed make it possible for a prospective client to be informed about the need for legal services, and about the qualifications of available lawyers and law

firms, without subjecting the prospective client to direct in-person or other real-time persuasion that may overwhelm the client's judgment.

[3] The use of general advertising and written~~—and—~~ recorded or electronic communications to transmit information from lawyer to prospective client, rather than direct in-person or other real-time communications, will help to ~~ensure—ensure~~ that the information flows cleanly as well as freely. The contents of advertisements and communications permitted under Rule 7.2 ~~are required to be—can be permanently~~ recorded so that they cannot be disputed and may be shared with others who know the lawyer. This potential for informal review is itself likely to help guard against statements and claims that might constitute false ~~or—and~~ misleading communications in violation of Rule 7.1. The contents of direct in-person ~~communications—~~or other real-time communication between a lawyer and a prospective client can be disputed and may not be subject to third-party scrutiny. Consequently, they are much more likely to approach (and occasionally cross) the dividing line between accurate representations and those that are false ~~or—and~~ misleading.

[4] There is far less likelihood that a lawyer would engage in abusive practices against an individual who is a former client, or with whom the lawyer has a close personal or family relationship, ~~prior or current professional relationship or close personal friendship, or where or in situations in which~~ the lawyer is motivated by considerations other than the lawyer's pecuniary gain. ~~Although not easily defined, a close personal friendship should be a mutually acknowledged friendship~~Nor is there a serious potential for abuse when the person contacted is a lawyer. Consequently, the general prohibition in Rule 7.3(a) and the requirements of Rule 7.3(c) are not applicable in ~~these—those~~ situations. ~~Also, paragraph (a) Rule 7.3(a) is not intended to prohibit a lawyer from participating in constitutionally protected activities of public or charitable legal—legal~~-service organizations or *bona fide* political, social, civic, fraternal, employee or trade organizations whose purposes include providing or recommending legal services to its members or beneficiaries. ~~Also, a lawyer may solicit professional employment by written, recorded or other electronic communication to persons not known to need legal services of the kind provided by the lawyer in a particular matter but who are so situated that they might in general find such services useful.~~

[5] But even permitted forms of solicitation can be abused. ~~Any~~ Thus, any solicitation ~~that~~ which contains information ~~that~~ which is false or misleading within the meaning of Rule 7.1, ~~that~~ involves coercion, duress or harassment within the meaning of Rule 7.3(b)(2), or ~~that~~ involves contact with a prospective client who has made known to the lawyer a desire not to be solicited by the lawyer within the meaning of Rule 7.3(b)(1) is prohibited. Moreover, if after sending a letter or other communication to a client as permitted by Rule 7.2 the lawyer receives no response, any further effort to communicate with the prospective client may violate the provisions of Rule 7.3(b).

[6] This Rule is not intended to prohibit a lawyer from contacting representatives of organizations or groups that may be interested in establishing a group or prepaid legal plan for their members, insureds, beneficiaries or other third parties for the purpose of informing such entities of the availability of and the details concerning the plan or arrangement which the lawyer or lawyer's firm is willing to offer. This form of communication is not directed to a prospective client. Rather, it is usually addressed to an individual acting in a fiduciary capacity seeking a supplier of legal services for others who may, if they choose, become prospective clients of the lawyer. Under these circumstances, the activity which the lawyer undertakes in communicating with such representatives and the type of information transmitted to the individual are functionally similar to and serve the same purpose as advertising permitted under Rule 7.2.

[7] The requirement in Rule 7.3(c) that certain communications be marked "Advertising Material" does not apply to communications sent in response to requests of ~~prospective~~ potential clients or their ~~representatives~~ spokespersons or sponsors. General announcements by lawyers, including changes in personnel or office location, do not constitute communications soliciting professional employment from a client known to be in need of legal services within the meaning of this Rule.

~~Although the requirement to place the words "Advertising Material" on written communication from a lawyer soliciting employment from a prospective client may not ensure the accuracy and reliability of the contents, it puts the prospective client on notice of the nature of the communication.~~

[7a] Utah Rule 7.3(c) requires the words "Advertising Material" to be marked on the outside of an envelope, if any, and at the beginning of any recorded or electronic

124 communication, but not at the end as the ABA Model Rule requires. Lawyer
125 solicitations in public media that regularly contain advertisements do not need the
126 “Advertising Material” notice because persons who view or hear such media usually
127 recognize the nature of the communications.

128 [8] Paragraph (d) of this Rule permits a lawyer to participate with an organization
129 that uses personal contact to solicit members for its group or prepaid legal service plan,
130 provided that the personal contact is not undertaken by any lawyer who would be a
131 provider of legal services through the plan. The organization must not be owned by or
132 directed (whether as manager or otherwise) by any lawyer or law firm that participates
133 in the plan. For example, paragraph (d) would not permit a lawyer to create an
134 organization controlled directly or indirectly by the lawyer and use the organization for
135 the in-person or other real-time electronic solicitation of legal employment of the lawyer
136 through memberships in the plan or otherwise. The communication permitted by these
137 organizations also must not be directed to a person known to need legal services in a
138 particular matter, but is to be designed to inform potential plan members generally of
139 another means of affordable legal services. Lawyers who participate in a legal service
140 plan must reasonably assure that the plan sponsors are in compliance with Rules 7.1,
141 7.2 and 7.3(b). See Rule 8.4(a).